

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 02 2015

MATTHEW J. DYKMAN
CLERK

MIGUEL LUJAN # 66946

Full Name/Prisoner Number

P.O. Box 520

SANTA ROSA, NM 88435

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Civil Action No. 15cv93SCY-KK
(To be supplied by the Court)

MIGUEL LUJAN, Plaintiff(s),

Full name(s) and prisoner number(s)

(Do not use *et al.*)

v.

City of Española, Española Police Department, Officer

Luginbuhl and officer Martinez, Defendant(s).

(Do not use *et al.*)

PRISONER'S CIVIL RIGHTS COMPLAINT

A. PARTIES AND JURISDICTION

1. MIGUEL LUJAN is a citizen of UNITED STATES who
(Plaintiff) (State)

presently resides at P.O. Box 520 SANTA ROSA, NM 88435, G.C.C.F.
(mailing address or place of confinement)

2. Defendant Officer Luginbuhl is a citizen of UNITED STATES/NEW MEXICO
(name of first defendant) (State)

whose address is 405 N. Paseo Leonate, Española NM, 87532

and who is employed as POLICE OFFICER, ESPANOLA POLICE DEPT. At the time the claim(s)
(title and place of employment)

"A. PARTIES."

CITY OF ESPANOLA: EMPLOYEE OF THE TWO POLICE OFFICERS. ALSO IS A MUNICIPALITY IN THE STATE OF NEW MEXICO. 405 N. PASEO DE ONATE ESPANOLA, NM 87532

ESPANOLA POLICE DEPT. A FULLY ESTABLISHED LAW ENFORCEMENT AGENCY OF THE CITY OF ESPANOLA NEW MEXICO.

405 N. PASEO DE ONATE, NM 87532.

1316 CABLE SUITE E, ESPANOLA NM. 87532.

alleged in this complaint arose, was this defendant acting under color of state law?

☒ Yes ☐ No. If your answer is "Yes," briefly explain:

He was on Police Duty

3. Defendant Officer Martinez is a citizen of UNITED STATES / New Mexico
(name of second defendant) (State)

whose address is 405 N. Paseo Leonale, NM 87532

and who is employed as ESPAOLA POLICE DEPT, POLICE OFFICER At the time the claim(s)
(title and place of employment)

alleged in this complaint arose, was this defendant acting under color of state law?

☒ Yes ☐ No. If your answer is "Yes," briefly explain:

He was on Police Duty

(If more space is needed to furnish the above information for additional defendants, continue on a blank sheet which you should label "A. PARTIES." Be sure to include each defendant's complete address and title.)

(CHECK ONE OR BOTH:)

☒ Jurisdiction is asserted pursuant to 42 U.S.C. ' 1983 (for state defendants) or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. ' 1331 (for federal defendants).

☒ Jurisdiction also is invoked pursuant to 28 U.S.C. ' 1343(a)(3). (If you wish to assert jurisdiction under different or additional statutes, you may list them below.)

B. NATURE OF THE CASE

BRIEFLY state the background of your case. ON 4-3-2014 ABOUT 12:45am ON VIGIL ST ESPANOLA, NM, ESPANOLA POLICE OFFICERS MR MARTINEZ AND MR LUGUNBUHI USED EXCESSIVE FORCE, DELIBERATE INDIFFERENCE CAUSING SERIOUS PHYSICAL AND EMOTIONAL INJURIES. ON THE ABOVE DATE I WAS WALKING DOWN THE ROAD, WHEN THE POLICE OFFICERS STOPPED ME. THEY ASKED ME TO PUT MY HANDS UP. I COMPLIED. NEXT THING I SAW WAS LASER LIGHTS POINTING TO MY CHEST AREA. THAN WITHIN SECONDS WITHOUT ANY JUST CAUSE I WAS BEING TAZED WITH THE LASER GUN. I WAS

SEE CONTINUED NEXT PAGE

FACTS

THAN HADCUFFED TO THE BACK AND ONCE AGAIN FOR ANY JUST CAUSE THEY CONTINUED TAZING ME UNTIL MY HEART STOPPED. THE PARAMEDICS ARRIVED AND THEY PERFORMED C.P.R AND TRANSPORTED ME TO THE HOSPITAL. I WAS PUT ON LIFE SUPPORT FOR (3) THREE DAYS, WHERE I REMAINED IN ICU FOR TWO WEEKS.

NORMALLY IN A SITUATION LIKE MINE, THE INCIDENT IS USUALLY REPORTED IN THE LOCAL NEWS PAPER AND THE NEWS. IN THIS CASE IT WAS NOT, BECAUSE THEY TRIED TO COVER UP THEIR WRONGDOING. ADDITIONALLY THEY TRIED TO COVER UP THE TRUTH BY STATING IN MY RELEASE PAPER THAT I HAD "OVERDOSSSED".

THIS COURT SHALL TAKE A SPECIAL NOTE: ON 7-17th 2014 I HAD A PROBATION VIOLATION HEARING IN COURT. AT THE HEARING OFFICER LUGINBUHI DID TESTIFY THAT DUE TO THE TAZING I WAS PUT ON LIFE SUPPORT, WITHOUT KNOWING IF I WAS THE RIGHT PERSON ACCUSED OF THE CHARGES PENDING AGAINST ME. THIS WAS NOT THE FIRST TIME ESPANOLA POLICE DEPT WRONGFULLY ACCUSED ME OF COMMITTING CRIMES. INFACIT THEY HAD HIT ME (3) DIFFERENT TIMES ON FELONY CHARGES, WHICH WERE FINALLY DISMISSED.

I AM VERY SURE THAT THE WHOLE INCIDENT WAS RECORDED ON DIFFERENT POLICE VIDEO CAMS. MY HANDS WERE UP WHEN THEY TAZED ME.

C. CAUSE OF ACTION

I allege that the following of my constitutional rights, privileges, or immunities have been violated and that the following facts form the basis of my allegations: (If more space is needed to explain any allegation or to list additional supporting facts, continue on a blank sheet which you should label "D. CAUSE OF ACTION.")

Claim I: CRUEL AND UNUSUAL PUNISHMENT, 8th Amendment
violation, TAZING AFTER HANDCUFFED, CAUSING NEAR
DEATH AND LIFETIME HEART PROBLEMS.

Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

THE DEFENDANTS ACTED IN DELIBERATE INDIFFERENCE WHEN THEY EXCESSIVELY TAZED ME EVEN WHEN I COMPLIED TO THEIR COMMANDS BY RAISING BOTH OF MY HANDS UP. I ALMOST LOST MY LIFE. THESE ACTS WERE CRUEL AND UNUSUAL. BECAUSE IT WAS UNNECESSARY AND

Claim II: VIOLATION OF DUE PROCESS. WANTON INFICTION OF PAIN.
5th AMENDMENTS
14th AMENDMENTS.

Supporting Facts: THE CITY OF ESPANOLA HAS DEVELOPED PROCEDURES, POLICIES, ~~AND~~ PROCEDURES AND MUST ABIDE BY STATE AND FEDERAL LAWS WHEN APPREHENDING A CITIZEN OF THE UNITED STATES OF AMERICA.

IN THIS CASE THE DEFENDANTS VIOLATED MY DUE PROCESS RIGHTS BY FAILING TO ADHERE TO STATE AND FEDERAL LAWS.

TAZING OF A UNITED STATES CITIZEN IS NOT REQUIRED ONCE THE PERSON COMPLIES TO POLICE COMMANDS. AS A MATTER OF LAW TAZING IS NOT ALLOWED ONCE A PERSON IS HANDCUFFED.

Claim III: EXCESSIVE FORCE USED BY THE DEFENDANTS.
UNNECESSARY USE OF TAZER.

Supporting Facts: AFTER I WAS HANDCUFFED, THERE WAS NO NEED FOR THE DEFENDANTS
TO TAZE ME. THE USE OF TAZER AFTER HANDCUFFED WAS NOT
JUSTIFIED AT ALL.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment? ____ Yes ☒ No. If your answer is "Yes," describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits using this same format on a blank sheet which you should label "E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF.")

a. Parties to previous lawsuit:

Plaintiff(s): N/A

Defendant(s): N/A

b. Name and location of court and docket number N/A

c. Disposition of lawsuit. (For example, was the case dismissed? Was it appealed?
Is it still pending?)

N/A

d. Issues raised: N/A

e. Approximate date of filing lawsuit: N/A

f. Approximate date of disposition: N/A

2. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part D. ____ Yes ☒ No.

If your answer is "Yes," briefly describe how relief was sought and the results.

N/A

3. I have exhausted available administrative remedies. ____ Yes ☒ No. If your answer is "Yes," briefly explain the steps taken. Attach proof of exhaustion. If your answer is "No," briefly explain why administrative remedies were not exhausted.

I WROTE LETTERS TO SEVERAL LAWYERS. NO ONE WANTS TO TAKE THE CASE AFTER THEY FIND OUT WHO THE DEFENDANTS ARE.

E. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

1. If you are proceeding under 28 U.S.C. § 1915, please list each civil action or appeal you have brought in a court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Please describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a blank sheet which you should label "F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS."

a. Parties to previous lawsuit:

Plaintiff(s): N/A

Defendant(s): N/A

b. Name and location of court and docket number N/A

c. Grounds for dismissal: () frivolous () malicious () failure to state a claim upon which relief may be granted.

d. Approximate date of filing lawsuit: N/A

e. Approximate date of disposition: N/A

2. Are you in imminent danger of serious physical injury? ☒ Yes ____ No. If your answer is "Yes," please describe the facts in detail below without citing legal authority or argument.

I BELIEVE THAT SOMEDAY THE DEFENDANTS WILL RETALIATE BY HURTING ME.

G. REQUEST FOR RELIEF

I request the following relief: PUNITIVE DAMAGES: (\$6,000) One thousand dollars a day from the date of incident until the case is settled.
 COMPENSATORY DAMAGES: (\$1,000) One thousand dollars a day from the date of incident until the case is settled.
 Any attorney fees and court costs.
 Any past, present and future medical expenses.

Miguel Lujan
 Prisoner's Original Signature

N/A
 Original signature of attorney (if any)

N/A
N/A
N/A
 Attorney's full address and telephone

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and correct. 28 U.S.C. ' 1746; 18 U.S.C. ' 1621.

Executed at B.C.F. Prison Santa Rosa, NM on 1-29-15.
 (location) (date)

Miguel Lujan
 Prisoner's Original Signature

Notary Michael J. [Signature]
Expires Nov 30 2016

CERTIFICATE OF SERVICE

" I HEREBY CERTIFY THAT A COPY OF THE
FOREGOING DOCUMENT WILL BE MAILED OR
HAND DELIVERED TO EACH DEFENDANTS
ONCE THE DOCUMENT IS PROPERLY FILED IN
THE COURT AND I HAVE RECEIVED A
COPY OF IT.

Miguel Lujan
1-29-15

Guadalupe County Correctional Facility
Miguel Lujan Sr. I.D.# 63089 F2E-207-
P.O. Box 520
Santa Rosa, New Mexico
88435



District of New Mexico
Office of the Clerk
Suite 270

333 Lomas Blvd., N.W.
Albuquerque, New Mexico
87102

RECEIVED
At Albuquerque NM
FEB 02 2015
MATTHEW J. DYKMAN
cc: eok

Legal Mail